

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
)
Amendment of Parts 21 and 74 of)
the Commission's Rules with Regard)
to Filing Procedures in the)
Multipoint Distribution Service)
and in the Instructional)
Television Fixed Service)
)
and)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

MM Docket No. 94-131

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PP Docket No. 93-253

To: The Commission

COMMENTS OF THE RURAL WIRELESS CABLE COALITION

RURAL WIRELESS CABLE COALITION

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TABLE OF CONTENTS

SUMMARY	ii
I. STATEMENT OF INTEREST	1
II. BACKGROUND	2
III. DISCUSSION	3
A. THE FCC SHOULD EXEMPT RURAL TELEPHONE COMPANIES FROM THE COMPETITIVE BIDDING PROCESS UNDER CERTAIN CIRCUMSTANCES	3
B. RURAL TELEPHONE COMPANIES SHOULD RECEIVE BIDDING PREFERENCES	8
C. THE FCC SHOULD ADOPT MSAS AND RSAS AS THE GEOGRAPHIC LICENSING AREAS.	9
D. THE FCC SHOULD GIVE EXPEDITED CONSIDERATION TO APPLICATIONS PROPOSING SERVICE TO RURAL AREAS.	10
E. THE FCC SHOULD AMEND ITS RULES TO CURB SPECULATION AND ELIMINATE MANIPULATION OF THE BIDDING PROCESS.	11
F. THE FCC SHOULD RETAIN PAPER APPLICATIONS AS AN OPTION FOR SMALLER COMPANIES.	12
IV. CONCLUSION	13

SUMMARY

The Rural Wireless Cable Coalition ("RWCC") is a group of rural telephone companies which, either directly or through subsidiaries or affiliates, operate or seek to operate wireless cable systems in rural areas where off-air broadcast and wired cable television service is scarce or non-existent. RWCC's member companies represent the only existing or potential sources of multichannel entertainment and educational video programming in the rural communities where they provide landline telephone service. As a result RWCC urges the Commission to take the following steps to ensure that MDS/MMDS service is available in rural America.

First and foremost, the Commission should exempt "qualifying rural telephone companies" from the competitive bidding process provided certain conditions are met. Second, the Commission should award bidding preferences in the form of installment payments, tax credits and bidding credits to all rural telephone companies. Third, to encourage participation by rural telephone companies, the FCC should adopt MSAs and RSAs as the geographic licensing areas. Finally, the FCC should give expedited consideration to applications proposing service to rural America.

RCWW also recommends that the FCC take steps to curb speculation and eliminate manipulation of the bidding process by adopting rules that will discourage the selling of licenses prior to the construction of the facilities.

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To: The Commission

COMMENTS OF THE RURAL WIRELESS CABLE COALITION

The Rural Wireless Cable Coalition ("RWCC"), by its attorney and pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), hereby submits the following comments in response to the "Notice of Proposed Rule Making" ("NPRM") in MM Docket No. 94-131 (released December 1, 1994) in connection with the above-captioned proceeding.

I. STATEMENT OF INTEREST

RWCC is a group of rural telephone companies which, either directly or through subsidiaries or affiliates, operate or seek to operate wireless cable systems in rural areas where off-air broadcast and wired cable television service is scarce or non-existent.¹ Like other rural telephone companies throughout the United States, RWCC's member companies represent the only existing

¹ Members of RWCC include Central Texas Wireless TV, Inc. (Texas), Adams Telcom, Inc. (Illinois), Leaco Rural Telephone Cooperative, Inc. (New Mexico), Delhi Telephone Company, (New York) and Valley Telephone Cooperative, Inc. (Arizona).

or potential sources of multichannel entertainment and educational video programming in the rural communities where they provide landline telephone service. As a result, the FCC's proposed revisions to its MDS and MMDS application and licensing procedures set forth in the NPRM will have a substantial effect on RWCC's member companies and on rural wireless cable service in general.

RWCC commends the Commission for taking measures that will expedite the wireless cable application process and thereby facilitate near-term construction of wireless cable systems, particularly in rural areas which currently have no other source of multichannel video programming. The following comments are directed to those FCC proposals which will most directly affect rural telephone companies who wish to provide wireless cable service, and to how the FCC might amend its rules to allow that service to be initiated as quickly and efficiently as possible.

II. BACKGROUND

Historically, rural telephone companies have been the only providers of telecommunications services in rural areas. Larger companies chose not to provide telephone service to these less economically desirable areas. The commitment these telephone companies have made to provide their subscribers with new telecommunications services is readily demonstrated by their quick roll-out of cellular services in the rural markets.

The FCC and Congress have also recognized the commitment of rural telephone companies to serve the needs of rural subscribers and have afforded rural telephone companies appropriate treatment

in recognition of this commitment. In 1984, Congress created a "rural exemption" to its telephone cable cross-ownership prohibition in order to promote the availability of cable service to rural America.² More recently, Congress specifically mandated that the Commission award licenses for new technologies in a manner that promotes the following objectives:

- 1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and
- 2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3). Accordingly, RWCC believes the Commission should adopt procedures that will give rural telephone companies a meaningful opportunity to acquire MDS/MMDS licenses thereby improving the likelihood that wireless cable service will be available in rural America.

III. DISCUSSION

A. THE FCC SHOULD EXEMPT RURAL TELEPHONE COMPANIES FROM THE COMPETITIVE BIDDING PROCESS UNDER CERTAIN CIRCUMSTANCES.

The FCC has proposed to adopt an auction system under which mutually exclusive applicants would bid on all usable E Group, F Group and H Group channels available in an entire market under one of the three competitive bidding procedures set forth in the Second

² 47 U. S. C. § 533 (b)(3) (1993).

Report and Order in PP Docket 93-253. NPRM at paras. 7, 23.³ In connection with this proposal, the FCC has requested comment on whether it should adopt bidding preferences for, inter alia, rural telephone companies. Id. at para. 24. While RWCC supports the award of bidding preferences to rural telephone companies, the FCC must do more to ensure that new technologies such as MDS/MMDS reach rural America. For the reasons set forth below, RWCC believes the FCC should under certain circumstances exempt rural telephone companies from having to participate in competitive bidding. Such an exemption is the only way to ensure that multichannel video programming will be provided promptly to the rural subscribers who rely entirely on RWCC member companies for that service.

The rationale for exempting rural telephone companies from competitive bidding is best understood after examining the critical role those companies play in providing communications services to rural America. RWCC's member companies have been and will continue to be the sole source of landline telephone service within their respective regions, and are the only entities in those regions with the ability and desire to promptly offer wireless cable service and the related array of one-way and interactive voice, video and data services which are or will soon be (offered in more densely

³ The primary auction methods include: (1) simultaneous multiple round auctions; (2) sequential oral auctions (open outcry); and (3) sealed bid auctions (either sequential or simultaneous). See Second Report and Order, 9 FCC Rcd at 2366-67 (1994).

populated areas.⁴ By contrast, the FCC's justification for awarding MDS and MMDS frequencies through competitive bidding, i.e., to ensure that the party who most highly values the spectrum obtains the license,⁵ is most logically applied to areas where more than one entity is willing to provide wireless cable service.⁶ Simply put, competitive bidding is of little or no value in awarding MDS and MMDS frequencies in areas served exclusively by rural telephone companies who are the only entities ready, willing and able to construct and operate wireless cable systems for their subscribers.

To remedy the problem, RWCC proposes that the Commission exempt "qualifying rural telephone companies" from having to

⁴ Certain of RWCC's member companies have already been asked to provide interactive communications services by their subscribers and local educators and medical personnel. By providing interactivity through wireless cable systems, rural telephone companies will, for example, extend educational opportunities by allowing teachers in larger communities and urban areas to instruct and interact with students in rural areas in real time. Similarly, interactivity will allow medical personnel in rural areas to receive real time instruction on both emergency and non-emergency procedures via video communications, and allow data to be transmitted from the rural medical staff to medical personnel based in larger urban hospitals for evaluation and response.

⁵ NPRM at para. 10.

⁶ Because of its small population base, a rural area usually cannot support more than one telecommunications service provider for any length of time. For example, one of RWCC's member companies, Leaco Rural Telephone Cooperative, Inc., provides telephone service to 900 subscribers spread out over a 4,500 square mile area covering southeastern New Mexico and a portion of west Texas, which amounts to approximately 2/10 of a customer per square mile. This low customer density, which is typical of many rural areas throughout the United States, effectively eliminates the possibility of a competing entity attempting to provide wireless cable service within Leaco's service area.

competitively bid on MDS/MMDS spectrum.⁷ RWCC submits that a "qualifying rural telephone company" ("QRTC") should be able to submit a proposal describing its service area and deployment schedule to the Commission prior to the auction for the geographic licensing area⁸ encompassing the QRTC's service area. Provided the rural telephone company is able to demonstrate its qualifications using the suggested criteria set forth below, the rural telephone company should be permitted to carve out its service area and obtain a license for the service without having to go through the competitive bidding process. RWCC is not suggesting that qualifying rural telephone companies not pay for their licenses, merely that they be given a meaningful opportunity to obtain the MDS and MMDS channels.

The following criteria should be used by the Commission in determining whether a rural telephone company qualifies for exempt status. The rural telephone company must serve fewer than 10,000 access lines and agree to an expedited construction schedule (for example 9 months). Prior to the auction, the Commission should review submission made by rural telephone companies and make a determination as to whether the rural telephone company's proposal qualifies it for exempt status. If the rural telephone company

⁷ Rural telephone companies deserve special consideration because of their past commitment of service to rural America. The dedication and commitment to provide quality service in the face of high costs and difficulty should be rewarded, not penalized by the enactment of rules that would inhibit or prohibit the provisioning of wireless cable service to rural America.

⁸ As discussed below, RWCC recommends that the Commission adopt MSAs and RSAs as the relevant geographic licensing areas.

qualifies, the Commission should announce to all potential bidders that the geographic area proposed by the rural telephone company will be excluded from the auction.⁹ Competitive bidding would then take place with the bidders' knowledge of the excluded area. After bidding is over, the Commission would determine the average per MHz per POP price paid by the winning bidders for the spectrum (in much the same manner the Commission determined the price to be paid by the broadband PCS pioneers' preference licensees) and obtain payment from the qualifying rural telephone company. RWCC respectfully submits that this proposal will best ensure deployment of wireless cable service to rural parts of the country.

Alternatively, RWCC urges that the FCC should at least award the exemption to any qualifying rural telephone company which has already accumulated MDS and/or MMDS frequencies or has leased ITFS channels for the purpose of providing wireless cable service. The FCC has already acknowledged that this "critical mass" approach would encourage enhancement of existing wireless cable operations, and is well within the FCC's legal authority. NPRM at para. 14 (citations omitted). RWCC submits that the rationale for allowing qualifying rural telephone companies an opportunity to "fill out" their systems is especially compelling given that their subscribers historically have received little or no broadcast or cable television programming and thus have an immediate need for wireless cable service.

⁹ RWCC proposes that the rural telephone company's geographic service area be limited to the counties in which the rural telephone company has access lines.

B. RURAL TELEPHONE COMPANIES SHOULD RECEIVE BIDDING PREFERENCES.

As an alternative to a QRTC exemption, the FCC should consider awarding bidding preferences to qualifying rural telephone companies, including installment payments, tax certificates and bidding credits. In this regard, it is worth noting that although Congress gave the FCC statutory authority to establish bidding preferences for rural telephone companies, thus far rural telephone companies have been denied bidding preferences for Narrowband PCS, Interactive and Video Data Services and Broadband PCS.¹⁰ Despite Congress's mandate in the Budget Act which specifically directs the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." (emphasis added),¹¹ the FCC's recently adopted competitive bidding rules have failed to ensure the provision of radio-based technology to rural America. To date, not one sliver of spectrum that has been auctioned has been awarded to a rural telephone company! Nor does it appear as if rural telephone

¹⁰ See "Third Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP 9 FCC Rcd 2941 (1994) ("Third R&O") and "Fourth Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 FCC Rcd 2330 (1994) ("Fourth R&O"). "Fifth Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 59 FR 37566 (July 29, 1994) ("Fifth R&O").

¹¹ See Budget Act, Section 309(j)(3).

companies will be very successful in obtaining broadband PCS spectrum through the competitive bidding process.¹² The Commission must make a more concerted effort to ensure that MDS/MMDS service reaches those living in rural areas. For these reasons, RWCC urges the FCC to reverse this trend and award bidding preferences to rural telephone companies in this proceeding.

C. THE FCC SHOULD ADOPT MSAS AND RSAS AS THE GEOGRAPHIC LICENSING AREAS.

The FCC has requested comment on whether it should require applications for new MDS/MMDS stations to be filed for all usable channels within a predetermined area such as cellular radio's Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"), or the television Areas of Dominant Influence ("ADI"). NPRM at para. 7. RWCC supports using predetermined geographic service areas and recommends that the FCC adopt MSAs and RSAs as the predetermined markets available for bidding in the MDS/MMDS auctions.

ADIs are used by Arbitron to define the areas in which certain television signals are most frequently watched. However, ADIs are not linked to the geographic area in which a licensee is likely to serve and do not correspond to the size of the 30-40 mile service area radius of a typical MDS/MMDS service station. The FCC should adopt a structure for its MDS/MMDS auctions which is more closely tied to the areas in which a licensee is more likely to provide

¹² Despite best efforts to put the capital together to participate in the broadband PCS auctions for the entrepreneurial blocks, RWCC has determined that very few rural telephone companies are going to be able to participate.

service. For this reason, RWCC submits that the FCC should define the relevant markets as MSAs and RSAs. RSA markets will be more affordable to rural telephone companies (and smaller operators in general) and are more likely to represent the area in which a rural telephone company will provide wireless cable service. MSAs, on the other hand, will be more attractive to "deep pocket" companies. By adopting an MSA/RSA approach, the FCC will encourage participation by a broader variety of service providers and thus promote competition within the wireless cable industry.

Finally, because the technical limitations of the wireless cable service may in certain instances preclude a single operator from providing service over extremely large geographic areas, the Commission should allow for geographic partitioning of RSAs. To the extent that winning bidders find that RSAs are too large for a single wireless cable operator, RWCC suggests that the FCC permit those entities to partition their markets in compliance with all relevant FCC legal and technical rules. RWCC notes that the rapid deployment of cellular service in the larger RSAs is partly attributable to the partitioning of markets among independent telephone companies.

D. THE FCC SHOULD GIVE EXPEDITED CONSIDERATION TO APPLICATIONS PROPOSING SERVICE TO RURAL AREAS.

RWCC recommends that the FCC give expedited consideration to "long form" MDS/MMDS applications for frequencies in rural areas (i.e., RSAs) under certain circumstances. Specifically, expedited consideration should be limited to rural MDS/MMDS applicants who agree to an accelerated construction schedule and have paid their

entire spectrum fee upfront. Tighter construction deadlines should ensure that the public receives service in a timely fashion. RWCC believes the accelerated construction schedule should be nine months, in order to account for possible delays attributable to shipping equipment to outlying areas or other factors such as bad weather.

Adoption of this proposal is of particular importance not only to rural wireless cable operators but to their subscribers who otherwise have little or no video programming available to them. It would disserve the public interest to delay wireless cable service to rural areas solely because of processing delays, especially when those within the community are seeking to provide the service.

E. THE FCC SHOULD AMEND ITS RULES TO CURB SPECULATION AND ELIMINATE MANIPULATION OF THE BIDDING PROCESS.

A fundamental purpose of the FCC's proposed rules is to reduce the number of applications filed by speculators whose primary interest is a quick payoff rather than providing service to the public. In this regard, RWCC urges that the FCC take special care in adopting any rules which allow mergers or transfers of licenses prior to the completion of construction. In fact, RWCC believes that the most effective way to limit speculation is to prohibit winning bidders from selling their MDS/MMDS channels for profit until those channels have been operational for one year.

RWCC also submits that if the FCC does not award bidding preferences specifically to qualifying rural telephone companies as described above, it should award bidding preferences to "small

businesses" as defined by the Small Business Administration, provided that those entities are unaffiliated with non-qualifying entities.¹³ To prevent larger companies from using smaller entities as "fronts" in order to obtain auction preferences, the FCC should not permit a non-qualifying business to have more than a 5% non-voting equity interest in a "small business" that is otherwise entitled to a preference.

F. THE FCC SHOULD RETAIN PAPER APPLICATIONS AS AN OPTION FOR SMALLER COMPANIES.

The FCC proposes to modify FCC Form 494 to make it compatible for electronic filing. Specifically, the FCC envisions an electronic form designed for personal computers using a windows-based environment. The data on the form would be uploaded from a personal computer to an electronic mailbox maintained by a third party and then downloaded to an FCC mailbox in the correct format. Applicants would be required to pay their application fees electronically as well.

While RWCC does not object to the FCC's proposed electronic filing process per se, the fact remains that smaller applicants, particularly those in rural areas, may not have access to the technology necessary to complete and submit an electronic filing. This will be especially problematic if the FCC eventually applies mandatory electronic filing procedures to ITFS applicants who are

¹³ As noted by the FCC, the SBA's definition of "small business" permits an applicant to qualify for financial assistance based on a net worth not in excess of six million dollars with average net income after federal income taxes for the two preceding years not in excess of two million dollars. NPRM at 15 n. 19.


not financially supported by a wireless cable operator. Accordingly, rather than leave smaller applicants at the mercy of application mills which have access to the required technology, RWCC recommends that the FCC at the very least allow rural telephone companies and other qualifying small businesses to submit paper applications for MDS and/or MMDS frequencies on an abbreviated FCC Form 494.

IV. CONCLUSION

RWCC's comments are directed towards one overriding objective: to enable rural telephone companies to fulfill their obligations to their rural subscribers. The FCC will serve the public interest by adopting application and licensing procedures that give rural telephone companies a meaningful opportunity to provide wireless cable service to those living in rural America. Hence, for the reasons described above, RWCC respectfully requests that the FCC adopt RWCC's recommendations as set forth in these comments.

Respectfully submitted,

THE RURAL WIRELESS CABLE COALITION

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